

SAVE THE GLADES COMMITTEE

IBLA 80-33

Decided April 23, 1981

Appeal from decision of Oregon State Office, Bureau of Land Management, eliminating unit 11-6, Medford District, from further consideration as a wilderness study area.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Inventory and Identification--Federal Land Policy and Management Act of 1976: Wilderness--Wilderness Act

Sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), mandates review by the Secretary only of those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a), 43 U.S.C. § 1711(a) (1976), as having wilderness characteristics described in sec. 2(c) of the Wilderness Act, 43 U.S.C. § 1131(c) (1976).

2. Federal Land Policy and Management Act of 1976: Inventory and Identification--Federal Land Policy and Management Act of 1976: Wilderness--Wilderness Act

Even if a 720-acre nonisland area of public land were considered as exhibiting the wilderness characteristics of size, i.e., of sufficient size as to make practicable its preservation and use in an unimpaired condition, sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), would not require review by the Secretary because such a parcel contains less than 5,000 acres.

3. Administrative Procedure: Burden of Proof--Federal Land Policy and Management Act of 1976: Inventory and Identification--Federal Land Policy and Management Act of 1976: Wilderness--Wilderness Act.

Where the Bureau of Land Management's final initial inventory decision states that certain public land is eliminated from wilderness review in that it obviously lacks wilderness characteristics because it is too small to make practicable its preservation and use in an unimpaired condition, that decision will be affirmed in the absence of sufficient reasons to change the result.

APPEARANCES: Richard J. Smith and Alan Winter, Save the Glades Committee, Williams, Oregon, for appellant; Nikki Ann Westra, Esq., and Marcia C. Lipson, Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

The Save the Glades Committee has appealed from the final initial inventory decision of the State Director, Oregon State Office, Bureau of Land Management (BLM), eliminating Oregon inventory unit 11-6, Medford District, known as the Grayback Glades, from further consideration as a wilderness study area pursuant to section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(a) (1976). In April 1979, BLM announced its proposed decision not to recommend unit 11-6 for intensive inventory because of its insufficient size. Following public comment, BLM issued its final decision on the initial wilderness inventory for Oregon and Washington. The decision was published in the Federal Register on August 29, 1979. 44 FR 50660.

In a report entitled "Final Decision of Public Lands Obviously Lacking Wilderness Characteristics and Announcement of Public Lands to be Intensively Inventoried for Wilderness Characteristics -- Oregon and Washington," dated August 1979, BLM stated the rationale for its final initial inventory decision regarding unit 11-6: "The unit is eliminated from wilderness review because it is too small to make practicable its preservation and use in an unimpaired condition" (Decision at 62).

[1] Section 603(a) of FLPMA provides for Secretarial review of "roadless areas of five thousand acres or more and roadless islands of the public lands, identified during the inventory required by section 1711(a) * * * as having wilderness characteristics described in

the Wilderness Act of September 3, 1964" ^{1/} and for recommendations to the President "as to the suitability or unsuitability of each such area or island for preservation as wilderness." 43 U.S.C. § 1782(a) (1976). The wilderness review of the public lands pursuant to FLPMA has been divided into three phases by BLM: Inventory, study, and reporting. (See BLM "Wilderness Inventory Handbook" (WIH) dated September 27, 1978, p. 3.) The first phase is further divided into an initial and an intensive inventory stage. The initial inventory consists of the identification and evaluation of inventory units and a final decision regarding each unit, determining whether it clearly and obviously does not meet the criteria as a wilderness study area or whether it may possibly meet such criteria. Those units which may possibly meet such criteria are subjected to an intensive inventory and a final decision is then made on which units to designate as wilderness study areas.

Considering the wilderness characteristics set forth in the Wilderness Act and the requirements of FLPMA, BLM set forth in the WIH three "key factors" for consideration in the inventory process of identifying nonisland roadless areas with wilderness characteristics. Those factors are: "1. Size. At least 5,000 contiguous roadless acres of public land. 2. Naturalness. The imprint of man's work must be substantially unnoticeable. 3. Either: a. An outstanding opportunity for solitude, or b. An outstanding opportunity for a primitive and unconfined type of recreation" (WIH at 6). The WIH indicates that for an area of public land of less than 5,000 contiguous roadless acres to be considered for wilderness study area identification, it must, in addition to possessing factors 2 and 3 above, be either:

1. Contiguous with land managed by another agency which has been formally determined to have wilderness or potential wilderness values, or

^{1/} Section 2(c) of the Wilderness Act of 1964, 16 U.S.C. § 1131(c) (1976), defines wilderness and lists wilderness characteristics. It states:

"A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value."

2. Contiguous with an area of less than 5,000 acres of other Federal lands administered by an agency with authority to study and preserve wilderness lands, and the combined total is 5,000 acres or more, or

3. Subject to strong public support for such identification and it is clearly and obviously of sufficient size as to make practicable its preservation and use in an unimpaired condition, and of a size suitable for wilderness management. [2/]

(WIH at 6).

The State Director's final initial inventory decision was based solely on the size of unit 11-6. The unit consists of two parcels of public land, one of 120 acres, the other of 600 acres.

On appeal appellant argues that the size of unit 11-6 was incorrectly assessed in that it should have included other roadless land contiguous to the unit which would bring the total acreage above 2,000 acres. Even if this other land were includable, 3/ the total acreage would still fall far short of the limitation established by section 603(a) of FLPMA. That section mandates review by the Secretary only of those roadless areas of "five thousand acres or more identified during the inventory required by section 1711(a) [201(a)]" as having wilderness characteristics. Unit 11-6 was identified as having certain wilderness characteristics during the initial inventory, but because of its size BLM eliminated it from intensive inventory. Thus, BLM's action was taken because unit 11-6 did not meet the wilderness characteristic of size as set forth in the Wilderness Act. See n.2, supra.

2/ Number 3 is apparently based on the language in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1976), relating to size which reads: "has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition." (Emphasis added.)

3/ The surrounding BLM administered land is Oregon and California Railroad and Coos Bay Wagon Road revested land (O & C land), managed for commercial timber production. See letter from District Manager, BLM, to Solicitor's Office, dated Feb. 6, 1980. It would serve no useful purpose to inventory this land for wilderness characteristics where the O & C Act of Aug. 28, 1937, 43 U.S.C. § 1181a (1976), mandates dominant use management of this land for commercial forestry and where, under the terms of section 710(b) of FLPMA the O & C Act would override any subsequent land use management decision made pursuant to FLPMA based on such an inventory. See Solicitor's Opinion, 86 I.D. 89, 97-98 (1979).

[2] Appellant's further arguments are directed to those criteria set forth above which BLM indicated in the WIH could qualify an area of public land of less than 5,000 contiguous roadless acres for wilderness study area identification. It would appear, however, that even if unit 11-6 had been considered as exhibiting the wilderness characteristic of size, i.e., "of sufficient size as to make practicable its preservation and use in an unimpaired condition," section 603(a) would not require review by the Secretary because unit 11-6 does not contain 5,000 acres or more.

In its brief in response to appellant's statement of reasons the Solicitor, on behalf of BLM, correctly points out that FLPMA does not require wilderness review of nonisland areas of roadless public land of less than 5,000 contiguous acres. The Solicitor states, in addition:

The guideline describing review of sub-sized parcels thus represents a wholly voluntary effort of the BLM, undertaken as part of its broad land management prerogative, to identify, consistent with the spirit of section 603, the wilderness characteristics of areas not subject to the wilderness review mandated by FLPMA. Such a review may lead to formal wilderness designation, in the discretion of Congress, or to cooperative or individual management by the BLM under existing land management statutes for the preservation of wilderness or other environmental, aesthetic, or recreational values. (See WIH at 6.) It is, however, an effort wholly outside the scope of section 603's wilderness review mandate.

(Response at 8). The Solicitor argues that such a discretionary undertaking by BLM is not reviewable under section 701 of the Administrative Procedure Act, 5 U.S.C. § 701 (1976), because there is "no law to apply." Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 410 (1971)." The Solicitor's reliance on section 701 and the Overton case is misplaced. Both deal with constraints on judicial review of agency decisions. Here, BLM's final initial inventory decision is reviewable by the Board which, thus, renders the final agency decision.

[3] Having reviewed that decision and the record in this case we cannot find that BLM erred in its determination that unit 11-6 failed to meet the wilderness characteristic of size as set forth in section 2(c) of the Wilderness Act. Appellant argues that there is strong public support for preservation of unit 11-6 as wilderness as evidenced by petitions seeking wilderness status for the unit containing 214 signatures of local residents (appellant's Statement of Reasons, Exh. A). 4/ It also contends that BLM failed to establish guidelines

4/ Even a cursory examination of these petitions indicates a number of duplicative signatures.

to determine whether an area is of sufficient size as to make practicable its preservation in an unimpaired condition.

Clearly BLM considered the public support evidenced for this unit. The public comments received after the initial proposed decision are summarized in its final decision at page 62. However, public support does not establish the practicability of the area's preservation in an unimpaired condition, nor has appellant offered any evidence which would tend to prove the practicability of preservation. The presumption must be, because of the size of unit 11-6, that it would not be practicable. 5/ Appellant has failed to show that there is sufficient reason to change the result. Cf. California Association of Four-Wheel Drive Clubs, 38 IBLA 361, 368 (1978).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

5/ On appeal appellant submitted a BLM wilderness bulletin from the Oregon State Office dated July 24, 1980, entitled "Announcement of Change in Inventory Decision." The bulletin indicated that unit 5-14, Prineville District, containing 3,240 acres, had previously been eliminated from further wilderness reviews, but that BLM was reversing its decision as to 3,114 of those acres. BLM stated that the reversal was based on "information in the letter of protest and re-evaluating our earlier findings." However, review of the decision in that case is not before the Board here and cannot be considered as supportive of appellant's position.

